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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 180702603-8603-01]

RIN 0648-BH98

Advance Notice of Proposed Rulemaking; request for information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS hereby publishes an advance notice of proposed rulemaking to solicit comments on modifying the Atlantic Large Whale Take Reduction Plan's Massachusetts Trap/Pot Restricted Area and the Great South Channel Trap/Pot Restricted Area to allow trap/pot fishing that does not use vertical buoy lines (referred to as buoy-lineless or ropeless gear) prior to gear retrieval. NMFS is requesting comments on this possible action including whether opening these areas that are currently closed to trap/pot fishing would provide an economic benefit or incentive for buoy-lineless fishing development and to assess interest from industry for buoy-lineless fishing in these areas.

DATES: Information related to this document must be received by close of business on *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-rulemaking Portal.

1. Go to

www.regulations.gov/#!/docketDetail;D=www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2018-0082

2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

-OR-

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Allison Rosner NMFS Protected Resources Division, Greater Atlantic Region, 978-282-8462, *allison.rosner@noaa.gov* or Kristy Long, NMFS Office of Protected Resources, 301-427-8402, *kristy.long@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Large whale entanglements resulting in mortalities and serious injuries still occur at levels that, for North Atlantic right whales, exceed the allowable levels established by the Marine Mammal Protection Act (MMPA). Under the MMPA, NMFS is required to reduce the mortality

and serious injury to three strategic large whale stocks—the Western Stock of North Atlantic right whales (*Eubalaena glacialis*), the Gulf of Maine stock of humpback whales (*Megaptera novaeangliea*), and the Western North Atlantic stock of fin whales (*Balaenoptera physalus*)—incidentally taken in commercial fisheries to below the potential biological removal level for each stock.

Currently the Atlantic Large Whale Take Reduction Plan (Plan) has two seasonal trap/pot closures: Massachusetts Restricted Area (50 CFR 229.32(c)(3)) and the Great South Channel Trap/Pot Closure (50 CFR 229.32(c)(4)). Massachusetts Restricted Area prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from February 1 to April 30. Great South Channel Trap/Pot Closure prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from April 1 through June 30.

In 2003, the Atlantic Large Whale Take Reduction Team (Team) agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and gillnet gear. Risk reduction of groundlines was addressed in October 2007 with the implementation of the sinking groundline requirement for all fisheries throughout the east coast (72 FR 57104, October 5, 2007). In 2009, at the request of the Team, NMFS also investigated the feasibility of opening a buoy-lineless (or ropeless) fishing gear testing site in the Great South Channel trap/pot and gillnet closure area. At the time, the Agency determined that technological and economic incentives were not sufficient for this to be successful, and that other management actions to reduce entanglement risks caused by vertical lines should be prioritized.

In 2014, the Plan was amended (79 FR 36586, June 27, 2014) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. This amendment included gear modifications, gear setting requirements, an expanded seasonal trap/pot closure (Massachusetts Restricted Area) and gear marking for both trap/pot and gillnet fisheries. The original Massachusetts Restricted Area was a seasonal closure from January 1 through April 30 for all trap/pot fisheries. In a subsequent Plan amendment, the boundary for the Massachusetts Restricted Area was expanded by 900 square miles (2.59 square kilometers), and the start date changed to February 1 (79 FR 73848, December 12, 2014).

In response to continued North Atlantic right whale population decline and associated entanglements as well as recent technological developments with ropeless fishing design, NMFS convened a subgroup to investigate the feasibility of buoy lineless options that may help reduce future entanglement risk. The “ALWTRT Ropeless Feasibility Subgroup” met March 15-16, 2018, in Providence, RI, to assess the current research available on ropeless fishing gear prototypes, the feasibility of this technology, and discuss data gaps. From this meeting, the subgroup suggested that the Team and NMFS revisit the previous discussion to open closed areas to buoy-lineless trap/pot fishing. This could incentivize cooperative research that may lead to further technological developments for buoy-lineless fishing.

This notice announces the Agency’s preparation for possible rulemaking and associated analysis of changing the Massachusetts Restricted Area and Great South Channel closures to buoy-lineless trap/pot gear areas under the MMPA and to request comments and information regarding this possibility. In order to commercially fish in these areas, fishermen must still comply with the Federal American lobster regulations, state regulations, and other Plan requirements (*e.g.* use of sinking groundlines). Given the surface system requirements (*e.g.*

mandated radar reflector use) under the Interstate Fishery Management Plan for American Lobster, in order to participate in trap/pot fishing that does not use vertical lines except during the active haul back of gear, interested parties with federal permits will be required to apply for an Exempted Fishing Permit (EFP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. EFPs may be issued for activities in support of fisheries-related research. When applying for an EFP, the applicant must include information on the research plan including principal investigator, project objectives, research description, gear and effort information, participating vessel information, any anticipated impacts on marine mammals or endangered species, and exemptions requested. If an EFP is authorized, trip reporting and project summary reports will also be required, and conditions on number of participants or traps or on areas of experimental fishing may be required. EFPs apply to Federal waters only; however, Plan requirements apply to both state and federal waters. Therefore, additional exemptions and restrictions from state regulations will be required from the applicable state authority. States may choose to adopt the Team conditions when granting these state authorizations. More information on EFPs can be found on GARFO's website:

www.greateratlantic.fisheries.noaa.gov/sustainable/research/.

Findings from this ANPR and supporting analyses will be presented at an upcoming Team meeting (scheduled for October 2018) for consideration. If at that time the Team recommends that NMFS move forward with allowing the experimentation of buoy-lineless fishing within the closure areas, NMFS will work with the Team to develop best practices that may be considered as conditions under the EFP (*e.g.*, ideal locations within the management areas, ways to reduce gear conflict with other fixed or mobile gears, reporting to law enforcement, etc.). This guidance will be useful for EFP applicants developing the research plans required by the

application process. Notices of our preliminary determination to approve an EFP are published in the **Federal Register** for a 15-day public comment period; therefore, the public will have an opportunity to review and comment upon any such requests. If the Team recommends this approach, this Advance Notice of Proposed Rulemaking will be followed by a proposed and final rulemaking.

Request for Comments

NMFS requests comments on potential impacts from this initiative including economic and habitat impacts, best discrete locations for vertical lineless trap/pot fishing, ways gear conflicts can be reduced, other guidelines for ropeless gear use to consider in the development of best practices, and to solicit industry interest for participating in these types of fisheries. NMFS also requests expressions of interest from potential applicants.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: September 24, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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